

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Investigation Relating to this Case: April 8, 2008 and June 25, 2008</p> <p>Dates of NOEs Relating to this Case: June 6, 2008 and July 7, 2008</p> <p>Background Facts: The EDRP was filed on January 26, 2009. The Respondent signed an Agreed Order on May 13, 2009.</p> <p>Current Compliance Status: The Respondent obtained NSR Permit 85829L001 to operate the portable rock crusher.</p> <p>AIR: Failed to obtain a permit prior to performing rock crushing operations [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a)].</p>	<p>Total Assessed: \$60,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$2,250/\$57,750</p> <p>The Respondent paid \$2,250 of the administrative penalty. The remaining amount of \$57,750 shall be payable in 35 monthly payments of \$1,650 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Respondent obtained authorization to operate a portable rock crusher on December 18, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	8-Sep-2008	Screening	17-Sep-2008	EPA Due	
	PCW	25-Sep-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Destructors, Inc.		
Reg. Ent. Ref. No.	RN102824737		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36093	No. of Violations	1
Docket No.	2008-1012-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$60,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes No previous Compliance History.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 0.0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts \$246
Approx. Cost of Compliance \$4,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$60,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$60,000**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$60,000**

DEFERRAL 0.0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is offered because a mandatory statutory penalty amount is being assessed.

PAYABLE PENALTY **\$60,000**

Screening Date 17-Sep-2008

Docket No. 2008-1012-AIR-E

PCW

Respondent Destructors, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36093

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102824737

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No previous Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 17-Sep-2008		Docket No. 2008-1012-AIR-E		PCW	
Respondent Destroctors, Inc.		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36093		<small>PCW Revision June 12, 2008</small>			
Reg. Ent. Reference No. RN102824737					
Media [Statute] Air					
Enf. Coordinator Cheryl Thompson					
Violation Number		<div style="border: 1px solid black; padding: 2px;">1</div>			
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 116.110(a)(1) and Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a)</div>			
Violation Description		<div style="border: 1px solid black; padding: 2px;">Failed to obtain a permit prior to performing rock crushing activities. Specifically, the Respondent was operating rock crusher Terex Pegson Rock Crusher Model 1412 (Serial No. 140211) on July 4, 2008 and July 8, 2008 and February 9, 2008, March 14, 2008, March 28, 2008 and April 9, 2008) at a quarry located at 478 Limestone County Road 374.</div>			
Base Penalty					<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	
	Potential	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	

Percent

0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	x	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	

Percent

100%

Matrix Notes

The Respondent failed to comply with 100% of the rule requirement; however, per Tex. Water Code § 7.052 (b), a rock crusher plant operating without a permit is penalized \$10,000 for each day that a continuing violation occurs.

Adjustment

\$0

Violation Events

Number of Violation Events

6

Number of violation days

6

<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 40px; height: 15px; text-align: center;">x</div>
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	quarterly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	single event	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>

Violation Base Penalty

\$60,000

Six daily events (one event for each day of operation) are recommended for rock crusher Serial No. 140211.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>
Extraordinary	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
Ordinary	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

\$60,000

Economic Benefit (EB) for this violation

Estimated EB Amount

\$246

Statutory Limit Test

Violation Final Penalty Total

\$60,000

This violation Final Assessed Penalty (adjusted for limits)

\$60,000

Economic Benefit Worksheet

Respondent: Destructors, Inc.
Case ID No. 36093
Reg. Ent. Reference No. RN102824737
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	8-Jul-2008	30-Sep-2009	1.23	\$246	n/a	\$246
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit. Date required is the first date a rock crusher was documented operating. The final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$246

Compliance History Report

Customer/Respondent/Owner-Operator: CN602838294 Destructors, Inc. Classification: AVERAGE Rating: 3.05
Regulated Entity: RN102824737 PORTABLE ROCK CRUSHING FACILITY 1 Classification: AVERAGE BY Site Rating: 3.01
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER 949753F
AIR NEW SOURCE PERMITS REGISTRATION 49753
AIR NEW SOURCE PERMITS PERMIT 85829L001
Location: PORTABLE
478 LCR 374
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: December 09, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 21, 2003 to June 21, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Cheryl Thompson Phone: (817) 588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Destructors, Inc.
4. If Yes, who was/were the prior owner(s)?
BARR, DOUGLAS L
5. When did the change(s) in ownership occur?
10/02/2007
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 06/05/2008 (656452)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DESTRUCTORS, INC.;
RN102824737**

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§
§
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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1012-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the Destructors, Inc. ("Destructors") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Destructors, represented by Patrick Larkin of the law firm of Strasburger & Price LLC, appear before the Commission and together stipulate that:

1. Destructors owns and operates a portable rock crusher located at 478 Limestone County Road 374, Groesbeck, Limestone County, Texas (the "Plant").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Destructors agree that the Commission has jurisdiction to enter this Agreed Order, and that Destructors is subject to the Commission's jurisdiction.
4. Destructors received notice of the violations alleged in Section II ("Allegations") on or about June 11, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Destructors of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of sixty thousand dollars (\$60,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Destructors paid two thousand two hundred fifty dollars (\$2,250.00) of the administrative penalty. The remaining amount of fifty-seven thousand seven hundred fifty dollars (\$57,750.00) of the administrative penalty shall be payable in 35 monthly payments of one thousand six hundred fifty dollars (\$1,650.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Destructors fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Destructors's failure to meet the payment schedule of this Agreed Order constitutes the failure by Destructors to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Destructors agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on December 18, 2008, Destructors obtained authorization under New Source Review Permit No. 85829L001 to operate a portable rock crusher at the Plant.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Destructors has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During the investigations conducted on April 8, 2008 and June 25, 2008, a TCEQ Waco Regional Office investigator documented that Destructors violated 30 TEX. ADMIN. CODE § 116.110(a)(1), TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) by failing to obtain a permit prior to performing rock crushing activities. Specifically, the rock crusher operated for six days without the required authorization. The rock crusher operated on January 4, 2008; January 8, 2008, February 9, 2008; March 14, 2008; March 28, 2008 and April 9, 2008.

III. DENIALS

Destructors generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Destructors pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Destructors's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Destructors, Inc., Docket No. 2008-1012-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

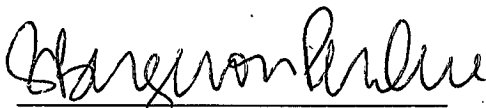
2. The provisions of this Agreed Order shall apply to and be binding upon Destructors.
3. If Destructors fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Destructors's failure to comply is not a violation of this Agreed Order. Destructors shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Destructors shall notify the Executive Director within seven days after Destructors becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Destructors shall be made in writing to the Executive Director. Extensions are not effective until Destructors receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against Destructors in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Destructors, or three days after the date on which the Commission mails notice of the Order to Destructors, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

8/10/2009

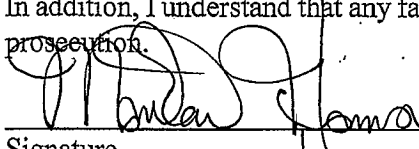
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Destructors's compliance history;
- Greater scrutiny of any permit applications submitted by Destructors;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Destructors;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Destructors; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

MATTHEW HANNA

Name (Printed or typed)

Authorized representative of Destructors, Inc.

5/13/09

CEO

Title